



FRED WILLIAMSON & ASSOCIATES, INC.
Telecommunications Management Services

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December 15, 2000 FCC MAIL ROOM

Office of the Secretary
Federal Communications Commission
445 Twelfth St. S. W., Room TW-A325
Washington D.C. 20554

RE: WT-00-239
DA-00-262 ✓

Dear Office of Secretary:

Enclosed please find the original and five (5) copies of the Comments of Fred Williamson & Associates Inc., to be submitted in the above-referenced Docket as response to the Wireless Telecommunication Bureau requesting Comment on the Petition for declaratory ruling that Western Wireless' basic universal service in Kansas is subject to regulation as a local exchange service.

Please file-stamp the additional copy and return it in the enclosed self addressed, stamp enveloped.

Sincerely,

FRED WILLIAMSON & ASSOCIATES, INC.

Jimmy D. Crosslin

Jimmy D. Crosslin,
Manager – Regulatory/Legislative Affairs

Cc: Rose Crellin, Room 4A-160
Commercial Wireless Division, Federal Communication Commission
Public Reference Room
ITS, Room CYB-400

Enclosure

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DEC 20 2000

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C. 20554

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| In the matter of Wireless Communication |) | |
| Bureau, Wireless Communication Bureau, Policy |) | |
| And Rules Branch seeks Comment of Petition for |) | Docket WT-00239 |
| Declaratory Order that Western Wireless Basic |) | |
| Universal Service in Kansas is subject to |) | |
| Regulation as Local Exchange Service |) | |

**Initial Comments of
Fred Williamson & Associates, Inc.**

December 15, 2000

Fred Williamson & Associates
2921 E. 91st St., Suite 200
Tulsa, Oklahoma 74137

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C. 20554

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Initial Comments
of
Fred Williamson & Associates, Inc.

Fred Williamson & Associates, Inc. ("FW&A") respectfully submits these Initial Comments in response to the Wireless Telecommunication Bureau (FCC) Public Notice, released November 21, 2000, in the above style cause. The FCC seeks comment in this docket regarding the Petition for a Declaratory Ruling that Western Wireless' basic universal service in Kansas is subject to local exchange service regulation. The Petition seeks to resolve certain regulatory issues that hamper the development of a fair competitive market. Fair competitive markets are necessary to ensure customer welfare regulatory goals are maintained. FW&A recommends Western Wireless be subject to local exchange service regulation to promote the State's public policy goal that all Kansans have access to state of the art telecommunication infrastructure at an affordable price.

Introduction

FW&A is a telecommunications management consulting organization located in Tulsa, Oklahoma, serving predominantly investor-owned, small rural, independent telephone companies in Kansas and Oklahoma. All FW&A client companies are currently participants/receivers from the existing universal fund. All FW&A client companies are substantially less than 50,000 access lines in size. Additionally, FW&A clients are members in, and participants of, the pooling processes of the National Exchange Carriers Association ("NECA").

FW&A, on behalf of its client companies, has been and will continue to be actively involved in the FCC dockets and related proceedings. FW&A appreciates the opportunity to provide these comments herein. The Comments herein are provided from the perspective of our individual rural, sparsely populated and geographically expansive clients to address the specific concerns these companies experience as small rural telecommunications carriers who are providing consumers responsive, technologically innovative and up-to-date service in their respective certificated service areas. These Comments focus on those issues addressed in the instant docket that may directly or indirectly affect the interests of our clients and their customers.

On November 3, 2000, the local independent telephone exchange carriers operating in Kansas respectfully requested that the Commission issue a Declaratory Ruling that the Basic Universal Offering of WWC Holding Company, Inc. d/b/a Cellular One (“Western Wireless”) in the State of Kansas is a fixed service rather than a Commercial Mobile Radio Service (CMRS) and is subject to regulation as a local exchange service. The Independents seek a declaratory ruling from the Commission to remove any confusion about the state and federal regulatory status of Western Wireless’ Basic Universal Service Offering in Kansas. FW&A fully supports the Petition for Declaratory Ruling filed by the 37 independent telephone companies.

These Comments, therefore, express the valid and legitimate concerns of small rural carriers regarding decisions of this Commission. The Petition serves the public interest by promoting regulatory parity, protect consumer welfare, facilitate the development of a competitive market, and provide a regulatory process to ensure all Kansans enjoy state of the art telecommunication services.

Background

Western Wireless seeks to provide fixed wireless local loops in Kansas as a substitute for wireline telephone service but claims the Kansas Corporation Commission is preempted from requiring it to comply with Kansas Universal Service Fund and Local Exchange Service regulation. The alleged preemption status frustrates the KCC’s duty to carry out the state public policy goal that every Kansan should have access to state-of-the-art telecommunication infrastructure at an affordable price. Western Wireless seeks to be regulated as a commercial mobile radio service instead of as a local exchange service provider. Their regulatory proposal is unfair to the incumbent rural telephone companies because Western Wireless’s basic universal

service offering is not intended, nor offered to the customer, as a commercial mobile radio service.

We believe that Western Wireless should comply with universal service requirements to ensure that customer welfare is protected. Furthermore, the Company's position runs afoul to the Commission's competitive neutrality principle of unfairly providing an advantage to one provider over another, and one technology over another. Western Wireless should not be provided an unfair competitive advantage because of the type of technology it employs. Western Wireless should be subject to regulation as a local exchange service to ensure that it does not enjoy an unfair and unintended competitive advantage. For these reasons, FW&A requests that the FCC issue a declaratory ruling that Western Wireless' basic universal service in Kansas is subject to local exchange service regulation.

General Comments

The rural independent telephone companies consider resolving the competitive neutrality issue is critical in order to promote fair competition and to ensure that rural customers continue to receive high quality telecommunication services. The 1996 Kansas Telecommunications Act provides enhanced universal service be available to all Kansans. In response to the new enhanced universal service requirements, FW&A's rural telephone company clients made significant investments to their network infrastructure to ensure that its customers enjoy high quality services and fulfill their "obligation to serve" responsibility to ensure that every customer within its service territory receives quality service.

The issue at hand is that Western Wireless seeks to substitute its fixed wireless loop services for the wireline local exchange service. Western Wireless offers this basic universal service without accepting any state universal and local exchange service regulations that promote the public interest. Instead, Western Wireless states that they are not subject to KCC universal and local exchange regulations but seeks universal service funds even though its basic universal service does not comply with state statutes.¹ This has resulted in FW&A recommending that Western Wireless be subject to local exchange service and universal fund regulation for the following reasons:

- Preservation of the competitive neutrality principle;
- Protecting customer welfare;

¹ KCC Docket No. 99-GCCZ-156-ETC/99-SSLC-173-ETC

- Promote revenue neutrality; and
- Afford all Kansans quality telecommunication services.

In summary, Western Wireless should receive comparable regulatory treatment as a local exchange service provider if it chooses to receive universal service funding. Failure to require Western Wireless basic universal service offering subject to local exchange service regulation raises discriminatory concerns. Furthermore, Western Wireless should be required to comply with the public interest standards that the State of Kansas requires for its citizens. The 1996 Kansas Act empowered the Commission to ensure all telecommunication carriers and local exchange carriers preserve and enhance universal service, protect public safety and welfare, and ensure the continued preservation and advancement of universal service.² Western Wireless should be required to adhere to Kansas' local exchange service and universal service regulations to ensure all Kansans receive comparable quality service.

A. Western Wireless should be subject to KCC Local Exchange service regulation to preserve competitive neutrality principle

Western Wireless should not be allowed to use its wireless technology to gain an unfair competitive advantage. The FCC has determined that the competitive neutrality principle is necessary and appropriate for the protection of the public interest and a principle on which to base policies for the preservation and advancement of universal service.³ In this instant proceeding, the nature of the service provided by Western Wireless is a key consideration for declaring Western Wireless' fixed service subject to local exchange and universal service regulation.

The competitive neutrality principle means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another. If a telecom service provider bypasses their regulatory requirements, then it enjoys a substantial competitive advantage by avoiding compliance to public interest standards set forth by the local state government. Western Wireless's basic universal service offering should not be regulated as a CMRS because it does not fit the FCC's definition of a mobile service. From our vantage point, telecommunication

² Kansas House Bill No. 2728, Section 5 (b)

³ Universal Report and Order 3

service providers should not be allowed to shop around for favorable regulatory arenas. A more efficient process is to establish the appropriate regulation according to the service offering.

As stated in the Petition filed by the rural independent telephone companies, Western Wireless' basic universal service offering is a fixed service instead of a "mobile" service.⁴ Depending upon the determination that the service offering is a fixed service instead of mobile, a different regulatory scheme is applicable. The FCC's guidelines explicitly state that the nature of the service offering determines whether the service is mobile.⁵ Western Wireless' basic universal service offering is neither a mobile service within the meaning of the Communications Act defined nor is it offered in conjunction with a mobile service.

Western Wireless' basic universal service offering should be deemed subject to local exchange service and conform to the requirements of eligible telecommunication carriers in order to promote the public interest. The public interest will not be served by competition merely for competition's sake but rather through a process that allows all eligible telecommunication providers to compete on a level playing field.

B. Western Wireless should be subjected to Local Exchange Service regulation to protect customer welfare

Protecting the customer welfare is the primary purpose of regulation. The KCC should not be preempted from fulfilling its duties for determining whether the customer welfare is promoted by granting Western Wireless eligible telecommunication carrier status. The customer welfare principle advocates that all customers should receive high quality, reasonable rates for utility services. As the telecommunication industry moves towards competition, care must be taken to ensure that rural telephone customers receive the benefits resulting from competition.

For rural telephone companies, diminished universal funding has severe implications for their customers. Small companies, like FW&A client companies, who serve a very limited residential customer base located in sparsely populated rural areas, experience costs of service well in excess of companies in urban areas. As mentioned earlier, the rural telephone companies are making significant investments to their network infrastructure to comply with Kansas' statutory requirements. Thus, regulatory parity is essential for developing sound policies to ensure rural customers enjoy state of the art telecommunication services.

⁴ See Page 5 of the Petition filed by the Independent Telephone Companies

⁵ First Report and Order; WT Docket No. 96-6; Amendment of the Commission's Rules to Permit Flexible Offerings in the Commercial Mobile Radio Services.

The protection of customer welfare should be a priority for regulators. We believe that Western Wireless should be subject to local exchange service regulation in order for the KCC to appropriately evaluate Western Wireless' request for eligible telecommunication carrier status to serve rural areas. The KCC should not be preempted from determining if Western Wireless's basic universal service offering satisfies the State of Kansas statutory requirements and public interest considerations. Furthermore, the KCC should not be preempted from addressing customer welfare. FW&A is deeply concerned that customer welfare will not be served if Western Wireless is granted ETC status. Foreseeable increases in the rural incumbent's local exchange rates could be attributable to the transfer of wealth from the consumer to Western Wireless. This phenomenon is caused by a lesser number of subscribers that produces a higher unit rate. Such potential rate increase attributable to the loss of universal funding support is difficult to justify if the new service provider does not comply with enhanced universal service standards.

In summary, we are not convinced that Western Wireless should be granted eligible telecommunication carrier status. From our vantage point, it does not promote customer welfare and economic efficiency. The Petition provides the KCC the jurisdiction to properly evaluate Western Wireless' request to become an eligible telecommunication carrier. Such jurisdiction is appropriate because Western Wireless's basic universal service offering is not a mobile service. Therefore, local exchange and universal regulation is applicable to ensure that customer welfare interest is protected.

C. Western Wireless should be subjected to Local Exchange Service regulation to comply with State Universal Service requirements to promote revenue neutrality

Western Wireless should not be given preferential regulatory treatment to receive universal funding. The cornerstone of universal funding is to provide a funding mechanism that allows customers to receive affordable quality service. Today, universal service funding is available to carriers based on their actual cost per access line. This practice provides cost support in those instances where warranted. This regulatory practice ensure for an efficient distribution of universal funding to promote competitive and revenue neutrality goals. Should universal support be provided to wireless providers to compete in rural areas, it may come from

funds presently provided to support the cost of those services.⁶ Western Wireless should be required to conform to universal service funding regulations to promote the public interest. Western Wireless seeks universal service funding that does not reflect its cost of providing service. Such a proposal is inherently unfair to rural telephone companies and to their customers. Specifically to establish the appropriate universal funding level, the real cost of providing universal service should be determined for each provider. Such funding would fairly compensate parties for providing service in rural areas and would not ignore the embedded cost of providers that have already built the infrastructure presently supporting the high quality of service to customers. In summary, the KCC should not be preempted in addressing its competitive and revenue neutrality policies.

D. Since Western Wireless' Basic Universal Service is not a "Mobile Service", it should comply with the local exchange carrier responsibility to afford all Kansans quality telecommunication services.

Competition should not come at the expense of universal service public policy goals. We should avoid the temptation of competition for the sake of competition and focus on the quality of service to be provided to rural customers at affordable rates. The Petition will allow local regulatory bodies to appropriately address these problematic issues to ensure that the public interest is served. The KCC is empowered under the 1996 Kansas Act to ensure that all telecommunication carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication services and safeguard the rights of consumers. In addition, the Kansas Act specifically stated that the preservation and advancement of universal service shall be a primary concern.⁷ The legislation described enhanced universal service to mean telecommunication services, in addition to those included in universal service, which shall include:

- a. Signaling system seven (SS7) capability, with CLASS service capability;
- b. Basic and primary rate integrated services digital network (ISDN) capability, or the technological equivalent; full fiber interconnectivity, or the technological equivalent, between central offices; and

⁶ Kansas Act, Section 9; KUSF is available to address rebalancing of rates to continue maintenance of interstate parity, shortfalls in access rates due to changes in federal rules; additional investment required to provide universal service of enhanced service; and for infrastructure expenditures in response to facility or service requirements established by legislature, regulatory or judicial review.

- c. Broadband facilities to accredited schools, hospitals, public libraries, and state and local government which request broadband services.⁸

In accordance with the Kansas legislation, all carriers must meet certain quality of service standards. The legislation provided the public policy goals of “ensur[ing] that every Kansan will have access to a first class telecommunications infrastructure that provides excellent service at an affordable price” and “promot[ing] consumer access to a range of telecommunications services, including advanced telecommunication services that are comparable in urban and rural areas throughout the state.”⁹ Failure to treat local exchange equally frustrates the intent of the universal service requirements and promotes the acceptability of substandard telecommunication services for Kansans.

FW&A firmly recommends that competitors must comply with the public policy goals. It is patently unfair that the incumbent provider complies with the public policy goal and Western Wireless claims federal preemption to state regulation to avoid providing a minimum level of quality telecommunication services. We believe that federal preemption is not applicable to Western Wireless’ basic universal service offering, nor does it serve the public interest.

Conclusion

FW&A urges the FCC to determine that Western Wireless’ basic universal service offering is subject to local exchange carrier regulation. Finding that Western Wireless’ basic universal service offering is subject to local exchange regulation promotes competitive neutrality. The competitive neutrality principle means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another. There is no apparent compelling argument that would advocate that fixed wireless service providers should be provided an unfair and unintended competitive advantage. Western Wireless’ basic universal service offering is neither a mobile service within the meaning of the Communications Act defined nor is it offered in conjunction with a mobile service. Therefore, it should be treated comparable to all local exchange carriers. The Petition provides the KCC the jurisdiction to properly evaluate Western Wireless’ request to become an eligible telecommunication carrier. In addition it allows the

⁷ Section C of House Bill No. 2728

⁸ See (q) of 1996 legislation

⁹ K.S.A. 1998 Supp. 66-2001(a) and (c).

KCC to perform its required duties to preserve and enhance universal service, protect the public safety and welfare, and ensure the continued quality of telecommunication services.

Respectfully submitted,

A handwritten signature in black ink that reads "Jimmy D. Crosslin". The signature is written in a cursive style with a large, stylized "J" and "C".

Jimmy D. Crosslin

Manager – Regulatory/Legislative Affairs